



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE145**

**Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Eel Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of non-compliance referral; request for comments.

**SUMMARY:** NMFS announces that on August 6, 2015, the Atlantic States Marine Fisheries Commission (Commission) found the State of Delaware out of compliance with the Commission's Interstate Fishery Management Plan (ISFMP) for American Eel. Subsequently, on August 19, 2015, the Commission referred the matter to NMFS, under delegation of authority from the Secretary of Commerce, for federal non-compliance review under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The Atlantic Coastal Act mandates that NMFS must review the Commission's non-compliance referral and make specific findings by September 18, 2015, 30 days after receiving the referral. If NMFS determines that Delaware failed to carry out its responsibilities under the Coastal American Eel ISFMP, and if the measures it failed to implement are necessary for conservation, then, according to the Atlantic Coastal Act, NMFS must declare a moratorium on fishing for American eel in Delaware waters.

**DATES:** Comments must be submitted by September 11, 2015. NMFS intends to make a determination on this matter by September 18, 2015, and will publish its findings in the **Federal Register** immediately thereafter.

**ADDRESSES:** Written comments should be sent to Derek Orner, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13325, Silver Spring, MD 20910. Mark the outside of the envelope “Comments on American eel Non-Compliance.” Comments may also be sent via fax to (301) 713-0596 or by email to [derek.ornier@noaa.gov](mailto:derek.ornier@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Derek Orner, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 427-8567, [derek.ornier@noaa.gov](mailto:derek.ornier@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The 2012 Benchmark Stock Assessment for American eel found that the American eel population in U.S. waters is depleted. The assessment concluded that the stock is at or near historically low levels due to a combination of historical overfishing, habitat loss and alteration, productivity and food web alterations, predation, turbine mortality, changing climatic and oceanic conditions, toxins and contaminants, and disease. As a result, the Commission took action to reduce mortality and limit further development of this fishery. In order to achieve the conservation goals and objectives of the ISFMP, states were to effectively implement the following actions: a 9” minimum size for yellow eel (the life stage when eels are typically harvested as bait) recreational and commercial fisheries; ½” x ½” minimum mesh size for yellow eel pots; Allowance of 4x4” escape panel in post of ½” x ½” mesh for 3 years (beginning on January 1, 2014); and, Recreational 25 fish bag limit per day per angler. On August 6, 2015, the Commission found the State of Delaware out of compliance for not fully and effectively implementing and enforcing these measures. The Commission subsequently referred its non-compliance finding to NMFS on August 19, 2015.

Federal response to a Commission non-compliance referral is governed by the Atlantic Coastal Act. Under the Atlantic Coastal Act, the Secretary of Commerce (Secretary) must make two findings within 30 days after receiving the non-compliance referral. First, the Secretary must determine whether the state in question (in this case, Delaware) has failed to carry out its responsibilities under the ISFMP. Second, the Secretary must determine whether the measures that the State has failed to implement or enforce are necessary for the conservation of the fishery in question. If the Secretary of Commerce makes affirmative findings on both criteria, then the Secretary must implement a moratorium on fishing in the fishery in question (in this case American eel) within the waters of the non-complying state (in this case, Delaware). Further, the moratorium must become effective within six months of the date of the Secretary's non-compliance determination. To the extent that the allegedly offending state later implements the involved measure, the Atlantic Coastal Act allows the state to petition the Commission that it has come back into compliance, and if the Commission concurs, the Commission will notify the Secretary and, if the Secretary concurs, the moratorium will be withdrawn. The Secretary has delegated Atlantic Coastal Act authorities to the Assistant Administrator for Fisheries at NMFS.

NMFS has notified the State of Delaware, the Commission, and the Mid-Atlantic Fishery Management Council in separate letters, of its receipt of the Commission's non-compliance referral. In the letters, NMFS solicits comments from the Commission and Councils to the extent either entity is interested in providing such comments. NMFS also indicated to the State of Delaware that the State is entitled to meet with and present its comments directly to NMFS if the State so desires.

NMFS intends to make its non-compliance determination on or about

September 18, 2015, which is 30 days after receipt of the Commission's non-compliance referral. NMFS will announce its determination by **Federal Register** notice immediately thereafter. To the extent that NMFS makes an affirmative non-compliance finding, NMFS will announce the effective date of the moratorium in that **Federal Register** notice.

**Authority:** 16 U.S.C. 5101 *et seq.*

Dated: August 21, 2015.

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Alan D. Risenhoover,  
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